

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICENTE A. ALVAREZ,

No. C 08-02225 CW (PR)

Petitioner,

ORDER OF TRANSFER

v.

ANTHONY HEDGPETH, Warden,

Respondent.

Petitioner, a state prisoner, has filed a pro se petition for a writ of habeas corpus. He seeks leave to proceed in forma pauperis (IFP).

Federal statute allows "the Supreme Court, any justice thereof, the district courts and any circuit judge" to grant writs of habeas corpus "within their respective jurisdictions." 28 U.S.C. § 2241(a). A federal petition for a writ of habeas corpus made by a person in custody under the judgment and sentence of a state court is properly filed in either the district of confinement or the district of conviction. Id. § 2241(d). The district court where the petition is filed, however, may transfer the petition to the other district in the furtherance of justice. See id. Federal courts in California traditionally have chosen to hear petitions challenging a conviction or sentence in the district of conviction. See Dannenberg v. Ingle, 831 F. Supp. 767, 767 (N.D. Cal. 1993); Laue v. Nelson, 279 F. Supp. 265, 266 (N.D. Cal. 1968).

1 Here, Petitioner challenges a conviction and sentence incurred
2 in Riverside County Superior Court, which is in the venue of the
3 Eastern Division of the Central District of California. See 28
4 U.S.C. § 84. Accordingly, that is the proper venue for this
5 action.

6 Pursuant to 28 U.S.C. § 1406(a) and Habeas L.R. 2254-3(b), and
7 in the interest of justice, the Clerk of the Court is ordered to
8 TRANSFER this action forthwith to the Eastern Division of the
9 United States District Court for the Central District of
10 California.

11 Petitioner has named the People of the State of California as
12 Respondent. The rules governing relief under 28 U.S.C. § 2254
13 require a person in custody pursuant to the judgment of a state
14 court to name the "'state officer having custody'" of him as the
15 respondent. See Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th
16 Cir. 1996) (quoting Rule 2(a) of the Rules Governing Habeas Corpus
17 Cases Under Section § 2254). The proper respondent is Anthony
18 Hedgpeth, the warden at the Kern Valley State Prison where
19 Petitioner is incarcerated. Therefore, the Court directs the Clerk
20 of the Court to substitute Warden Hedgpeth as Respondent in this
21 action.

22 Petitioner's IFP application is TERMINATED as moot.

23 IT IS SO ORDERED.

24 Dated: 7/16/08



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

VICENTE A ALVAREZ,

Plaintiff,

v.

THE PEOPLE OF THE STATE OF
CALIFORNIA et al,

Defendant.

Case Number: CV08-02225 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 16, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Vicente A. Alvarez V99688
Kern Valley State Prison
P.O. Box 5102
Delano, CA 93216

Dated: July 16, 2008

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk

United States District Court
For the Northern District of California